

A REVIEW OF THE STRENGTHENING OF THE NIGERIA CONSUMER PROTECTION FRAMEWORK VIA JUDICIAL ACTIVISM WITHIN THE HOSPITALITY AND TOURISM BUSINESSES

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Abstract

This paper examined the framework institutionalised for the protection of consumers in Nigeria with bias on the effectiveness and efficiency of available consumer protection framework on hospitality and tourism businesses in Nigeria. In particular, it x-rayed the administrative and regulatory mechanisms put in place for the protection of consumers and considered the attitude of the courts in matters affecting consumers while patronizing hospitality and tourism products / services. It was evidenced from the submission of the paper that there are several regulatory agencies, with functions sometimes overlapping, set up to advance the consumer's course. The effectiveness of these agencies is brought into scrutiny, as sometimes, their existence is hardly known to the consumers. If the consumer is to take benefit of whatever legal framework institutionalised for his protection in Nigeria, some level of judicial activism are required. Although, this paper does not examine the concept of judicial activism, its legitimacy nor as a mechanism for providing checks and balances in within the consumer protection frameworks it Nigeria; it is employed to establish the theory of popular participation of courts in the decision making processes through settlement of disputes, interpretation or construction of laws, determination of propriety of legislations, legislative and execution actions within the doctrine of separation of powers for the purpose of enforcement of the limitations in in existing laws. The study exposed a general lacklustre approach of the courts in consumer protection cases and its adverse effect on the consumers. It concludes that judicial activism would be a veritable tool in advancing the compliance and benefits to consumers of whatever legal framework institutionalised for his protection in Nigeria in the face of societal changes, consumerism and customer protection.

Keywords: *Judicial Activism, Consumer Protection, Courts, Hospitality and Tourism, Consumerism*

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1.0 INTRODUCTION

Consumption is the essence of production of goods and services. The process of production would be worthless if the products of that process are not consumed. In Nigeria however, the incidence of fake, substandard, defective and adulterated product assumes an alarming dimension. The quality of services rendered by service providers leaves much to be desired. The consumer is left in a precarious position, having to pay for shoddy services, sometimes no services, and for goods that are below the regulated standards. Consumers of goods and services have been exposed to myriad of problems including problem of safety and quality of product and service.

The term “hospitality and tourism business” is a broad category of fields within the service industry that includes lodging, food and drink service, event planning, theme parks, transportation, cruise line, airline, ticketing, tour services and additional fields within the tourism industry⁴. These businesses depend on the availability of customer time and disposable income. The words – hospitality and tourism - are often used interchangeably⁵. Globally, it is a multi-billion-dollar industry with broad offerings. In Nigeria, the best of hospitality development is found in accommodations, travels and restaurants. The hospitality market is booming in Nigeria and with that boom comes new found diversification in a new range of quality and classifications yet there is much more room for growth, diversification and standardization. The industry remains one of the most unregulated in Nigeria, thus, its service offerings are not centrally standardised thereby creating different service levels which often result on unpalatable customer experiences when such consumers are exposed or in contact

with most of the business operators and managers.

Some framework has been institutionalised to address these consumer problems. These take the form of administrative interventions that regulate the activities of manufacturers and suppliers of goods and providers of services. Furthermore, the courts are there to enforce consumer legislation and award appropriate remedies to aggrieved consumers. This study analyses the existing framework for the protection of hospitality and tourism consumers in Nigeria. To achieve the objective of this presentation, some cases that relate to consumer protection have been appraised to determine the attitude of Nigerian courts towards consumers’ protection.

A consumer is broadly defined as a person who buys or uses goods and services^{6, 7}. This definition imports contractual nexus into the concept of consumer. It presupposes that the consumer retains his freedom; freedom to choose what and where to buy and freedom to choose to use or not to use a particular product or service. The consumer is therefore someone who acts freely and is not in any way coerced or forced into the relation. The pertinent question is whether the Nigerian consumer is adequately protected within the ambit of existing legislature among others.

The wheel of commerce grinds when the consumer is active. When the consumer meets his needs, suppliers of goods and services are activated, and in the producers bid to meet the ever-increasing needs of the consumer commerce thrives with a consequential flourishing effect on the economy. This way, the consumer is projected as the king, he activates the course of commerce, the producer and service provider would only be ready to produce goods and provide services when the consumer is ready to pay for them. But is the consumer

⁴ Babalola W. A.; Oyedokun G. E and Adeyemo K. A (2019) Banes of Multiple Tax Regimes in Nigeria Hospitality Business: A Critical Analysis of Courts’ Decisions in Restoring Sanity in Sectorial Tax Administration. *Islamic University Multidisciplinary Journal (IUMJ)*, vol. 6 (5). P.23 - 33

⁵ Babalola W. A (2003) *Hospitality Marketing*. Lagos; Adeyz Consulting

⁶ Ukwewe, F. O. (2006). Protection of Consumers of Financial Service in Nigeria: A Review. (2) 1, 108 *Consumer Journal*

⁷ 167(1) Federal Competition and Consumer Protection Act, 2018

always the king? Reflecting on this, Monye⁸ portrays a picture of the consumer thus:

“It is a truism that there is high incidence of fake and substandard products ... The problem, ... cuts across various fields including ... the supply of services. Most often, consumers find themselves saddled with shoddy services, or even nonperformance. Unfortunately, they rarely seek redress due to a number of reasons, the most prominent reason being ignorance The supply of shoddy products and services constitutes a big problem to the consumer.”

This expression, which finds support in several commentaries⁹, reveals that the consumer is anything but the king he ought to be, that the consumer is in a sordid state. A typical legal rationale for protecting the consumer is based on the notion of policing market failures, dishonesty and inefficiencies, such as inequalities of bargaining power between a consumer and a business¹⁰. The need for the consumer to be protected therefore arises.

2.0 MEANING, HISTORY AND LEGAL BASIS FOR JUDICIAL ACTIVISM IN NIGERIA

In order to understand the true meaning of expression – “Judicial Activism”, it would be appropriate to consider various terms usually spoken of in context to administration of justice. The tem ‘Judicial’ is an adjective from French word ‘Judex’ meaning a Judge, it means or pertaining or appropriate to the administration of justice or courts of justice or a Judge thereof or in the proceedings therein”. The right to pronounce a definitive judgment is considered the sine quo non of a Court¹¹. The word “Court of Justice” denotes a Judge who is judge

empowered by law to act judicially as a body, when such judge or body of judges is acting judicially. The word “Judiciary” again is explained to mean the Judges of a State collectively¹².

The term judicial activism is explained as a “Judicial philosophy which motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistent with the restraint expected of appellate Judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters.”¹³ Though it is the legislature, which makes the Law, the Judgments rendered by the Supreme Court and High Courts give the Law a concrete shape, which the people understand better as the Law. Hence, there is importance of the decision making process. In the Common Law, development is permitted, if not expected in Stature law, there must be at least a presumption that Parliament has on the topic it is dealing with, said all that it wanted to say. Thus, judicial activism can be said to be a device to accomplish the cherished goal of social justice.

Nigeria as a society divided along the line of ethnicity, regionalism, and religious dichotomy most often do experience lot of controversies and appeal of litigation has been particularly strong with citizens’ increasingly viewing judicial intervention as principal opportunity to shape the public sphere. The Nigerian Constitution 1960, 1963, 1979 and 1999 (as amended) placed the judiciary in this tasking position with a number of provisions that deal with structure, functions and powers of the judiciary¹⁴. The Constitution introduced judicial system in hierarchy viz. - The Supreme Court of Nigeria, the apex court of the land; the Court of Appeal and the High courts; Shariah Courts’ of Appeal and Federal High Court. Although the

⁸ Monye, F. N. (2003). Law of Consumer Protection. Ibadan: Spectrum Books Ltd. P. 1

⁹ Chukwu, I. M. (2005). Advertising Practice and Consumer Protection. Consumer Journal (1)1,137

¹⁰ Mickleburgh, J. (2010). Consumer Protection. Oxon: Professional Books. Available at <http://en.wikipedia.org/wiki/Consumer> (accessed Oct 31, 2022).

¹¹ See Sec. 19 Indian Penal Code by Ratanlal & Dhirajilal. 20th Edn

¹² Concise Oxford Dictionary, New Edition for 2020

¹³ See Black’s law Dictionary, Sixty Edition, [Centennial Edition (1891-1991)]

¹⁴ See **A. G. (Federation) v Guardian Newspaper** (5 Supreme Court 1999: 107)

Constitution contains specific provisions d. relating only to the Supreme Court, Court of Appeal and Federal High Courts it leaves the subordinate judiciary to the states. The judiciary e. plays a vital role as social activist in the Nigerian progressive democratic reality. This growing role and level of judicial intervention depend on the Nigerian legal system where it operates a written Constitution, thus judiciary exercise only a limited power just as the other institutions of the executive and the legislature. However, in Nigeria like many countries operating written Constitution, judiciary has been under attack for assuming a posture of imperialism or supremacy in the scheme of governance. This proposition may not be true in that the powers are ultimately as limited as is that of the executive and the legislature in their several assignments¹⁵. However the provision of the Constitution enables the institutions to provide checks and balances on each other if any indulge in excessive, arbitrary or tyrannical use of the power. Against the above backdrop and by virtue of section 6(6) of the Nigerian Constitution, the judiciary has come to exercise vast powers of judicial review from which judicial activism metamorphous in respect of the legislative and executive functions. Thus the Nigerian judiciary as represented by courts generally performs one or all of the following functions in constitutional democracies:

- a. Interpretation of the Constitution or law¹⁶;
- b. Upholding the principle of Federalism by enforcing the balance between the Federal and States organs of Government¹⁷;
- c. Protection of fundamental rights of the citizens¹⁸;

¹⁵ Ibrahim I., (2005); The Executive, Legislative and Judiciary: An Insight into their functions under the Nigerian Democratic Setting, Journal for the Promotion of Studies in Religion, Education and Languages (JOPSREL). Vol 4 No 1

¹⁶The spirit behind section 6(6) of the Nigeria Constitution 1999 as amended

¹⁷ The Federal, state and Local Governments in Nigeria are autonomous by virtue of sections 4, 5 and 6 *ibid*

¹⁸ See section 46 *ibid*

Determining the validity of legislative, quasi-legislative, executive or quasi-judicial actions on issues that touch the Constitution¹⁹; and

Determining the consistency or inconstancy of a legislation to the Constitution by applying and interpreting the laws of the legislature²⁰.

These functions, particularly numbers C and D above, that give the courts ability to provide citizen with limited access while providing an enabling environment to challenge unpopular and oppressive policies through the litigation. Admittedly courts have come to exist for the protection of and enforcement of citizens' rights who put their views across with all potency for them to vent their feelings. Judicial activism is thus a necessary implication of the court in establishing the rule of law, protection of citizen rights, limiting excess in governance and determining the validity of legislation, legislative and executive actions through checks and balances scheme of the Constitution and purposeful interpretation of laws.

Instructively, the concept of judicial activism has its origin from the English common law imported into the country, Nigeria and more particularly influenced by the United States of American judicial practice which is attached to the very original debate about constitutional interpretation framed in terms of broad versus strict construction or narrowly and or broadly²¹. Significantly the origin of judicial activism is linked to the power of judicial review asserted by the Supreme Court in **Marbury v Madison**²². Incidentally, there is no provision in the United States Constitution where the power of judicial review is contained²³; yet, scholars have criticised and accused the Supreme Court,

¹⁹ See sections 1(3) and 4(8) *ibid*

²⁰ Section 1(3) *ibid*

²¹ Ibrahim I. (2014) Rethinking Judicial Activism Ideology: the Nigerian Experience of the Extent and Limits of Legislative-Judicial Interactions. International Journal of African and Asian Studies. Vol 4

²² 1 Cranch 5 United States 1803: 137

²³ Ernest A. Y., (2002) Judicial Activism and Conservative Politics, University of Colorado Law Review

its judgments and judges of judicial activism and, decided cases of included in their submissions²⁴.

It is not certain and difficult to trace the origin of judicial activism linkage with the Nigeria judiciary. The judiciary has come to be established as an independent organ of the government in the Nigerian constitutional democracy since enactment of the 1963 Constitution and subsequently under the 1979 and 1999 Constitutions of Nigeria. It is worthy to note that the period after the declaration of the Federal Republic of Nigeria, a few instances

²⁴ The cases most often cited are **Lawrence v Texas**, was a landmark decision of United States' Supreme Court which struck out the Sodomy Law in Texas and by proxy invalidated sodomy law in thirteen other states where they remained in existence, thereby making same-sex sexual activity legal in every states and territories of the nation. The case was based on Texas Law, classifying consensual adult homosexual intercourse illegal. The US Supreme Court had previously addressed the issue in 1986 in the case of **Bowers v Hardwick** 478 US 186 (1986) 149 where it upheld the challenged Georgia statute not finding a constitutional protection for sexual privacy. Lawrence's case explicitly overruled Bower's holding that it had viewed the liberty interest too narrowly., **United States v Morrison**, 529 US 598 (2000) was another landmark United States Supreme Court's decision which held part of the Violent Against Women of Act 1994 unconstitutional because they exceeded congressional power under the Commerce Clause and under Section 5 of the 14th Amendment to the Constitution. In 1994, the United States Congress passed Violent Against Women Act which contained a provision for a federal civil remedy to a victim of gender-based violence even when no criminal charges were filed, **Brown v Board of Education of Topeka**, 347 US 483 (1954) the United State Supreme Court declared State Laws establishing separate public school for black and white students unconstitutional. Thee case overturned the **Plessy v Ferguson** (163 US 537 (1896) decision of 1896 which allowed separate but equal segregation facilities on public transportation were constitutional; **Roe v Wade**, 410 US 113 (1973) the United State Supreme Court decision under the Due Process Clause of the 14th Amendment where the court resolved the balancing test by tying state regulation of abortion to the women's current trimester of pregnancy; and **United States v Lopex** 514 US 549 (1995) to mention but a few, have often been used as points of reference.

evidenced that the Supreme Court exhibited certain elements of judicial activism, which established the Court linkage to judicial activism²⁵.

The judiciary has since claims the power to nullify on constitutional grounds inclusive of inconsistent acts of the legislature to the Constitution, laws in conflict with equity, good conscience and natural laws, or check excesses of the executives. Though courts do not doubt the privileges of the legislature or the executive especially in respect of their internal proceedings, yet such proceedings have been brought under the purview of judicial review²⁶. Thus the examples of judicial courage and creativity exhibited by the Supreme Court within its constitutional propriety support the argument that the concept of judicial activism had been with and gradually developed through the function of the courts in Nigeria. Instructively, given the federal structure of Nigerian government, judicial activism may be constitutionally invoked to invalidate legislation, legislative or executive actions which are inconsistent with the Constitution^{27, 28}. When the courts wield their power and strike down legislation, their action implicates separation of powers issues because the Court's decision challenges policy choices made by the other institutions of government. However, such a judicial act carries with it the potential for awakening the legislature and the executive,

²⁵ **Adegbenro v Akintola**, (1 All Nigerian Law Report 1963: 305), **Williams v Majekodunmi**, (2 Supreme Court of Nigerian Law Report 1963: 26), **Council of University of Ibadan v Adamolekun**, (Nigerian Supreme Court Cases 1967: 210) and **Lakanmi v Attorney General Western Nigeria** (Nigerian Supreme Court Cases 1970: 143) and other decisions vindicating the rights of Nigerians.

²⁶ This is what the court exhibited in the cases of **Inakoju v Adeleke** (2 Monthly Judgment of Supreme Court 2007: 1), **Dapianlong v Dariye** (8 Monthly Judgment of Supreme Court 2007: 140).

²⁷ Nwabueze B O., (1982) The Presidential Constitution of Nigeria, London Sweet & Maxwell, (1982) 1 at 32-36

²⁸ Calabresi, Steven G., (1995), 94 "A Government of Limited and Enumerated Powers": In Defense of **U.S. v. Lopez**, Michigan Univ. L.R

including the choice of reversal through constitutional amendment or reenactment of the invalidated legislation.

However, the concept of judicial activism has been subjected to criticism by its opponents on the claim that it allowed court to usurp the power of other institutions of government therefore, undemocratic. The best answer to such criticism can be found in the word of Hon Justice Michael Kirby²⁹, who posited that:

“Nostalgic dreams of judges without choices, devoid of creativity, abjuring all ‘activism’ may be found in fairy stories. But for judges, lawyers and citizens who are obliged to live in the real world, it is necessary to face up to the requirements of judicial choice. Choice about the meaning of a constitutional text, choice about the interpretation of ambiguous legislation, choice about the application, extension, confinement or elaboration of old principles of the common law to new facts, circumstances and times.”

3.0 CONSUMER PROTECTION INSTITUTIONS IN NIGERIA

Bureaucrats view consumer concern as a matter within the dominion of public law. To them, consumers concern, that is, issue of defective and adulterated products, shoddy services, exorbitant prices, and other forms of unfair trade practices impact negatively on the state, and is indeed a threat to public safety. To bureaucrats, injury caused to one consumer as a result of unwholesome trade practice portends danger to the entire public. It becomes imperative for the state to protect itself and the populace from the antics of unscrupulous producers and service providers by way of administrative intervention. There is a conscious legal policy by the government inspired by the recognition of the vulnerable position, which the consumer occupies in the market place³⁰. The government

has sought to ensure the protection of consumer by assigning specific functions to some governmental agencies⁶. Furthermore, administrative intervention institutionalising appropriate legal framework has been put in place, leading to the creation of some regulatory agencies. The agencies are vested with authority to supervise, monitor and regulate the activities of producers and providers of services.

The Federal Competition and Consumer Protection Act, 2018 (“FCCPA”) is the primary legislation that governs and protects the rights of consumers in Nigeria. The FCCPA established the Federal Competition and Consumer Protection Commission (“FCCPC”) to, amongst others:

- i. Protect and promote consumers’ interest and welfare by providing consumers with a wider variety of quality products at competitive prices; and
- ii. Prohibit restrictive or unfair business practices that prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria.

Prior to the enactment of the FCCPA, the principal legislation that protected the rights of consumers in Nigeria was the Consumer Protection Council Act, 2004 (“CPA”), which established the Consumer Protection Council (“CPC”); however, the FCCPA repealed the CPA and the FCCPC assumed all rights, interests, obligations, assets and liabilities of the CPC. The provisions of the FCCPA further stipulate that any regulation, order, bye-law or notice that was issued by, or for the purpose of, the CPC under the CPA shall be deemed to have been made or issued by, or for the purpose of, the FCCPC and shall continue in force until revoked or amended by the FCCPC. Thus, in addition to the provisions of the FCCPA, there are:

- i. The FCCPC (Sales Promotion) Registration Regulations, 2005;
- ii. The FCCPC Guidelines for Sales Promotion Registration;

Calabar, Nigeria, , at p. 178

²⁹ Justice Michael Kirby, (2004) “Judicial Activism: Authority, Principle and Policy in the Judicial Method” Speech delivered at the Hamlyn Lecture

³⁰ Boma, A. F , (2008). Control of Advertisements as a Consumer Protection Measure in Nigeria. Unpublished Ph. D. Thesis, University of Calabar,

- iii. The FCCPC Business Guidance Relating to COVID-19 on Business Co-Operation/Collaboration and Certain Consumer Rights Under the FCCPA, 2020 (“Business Guidance”);
- iv. The FCCPC (Administrative Penalties) Regulations, 2020; and
- v. The FCCPC Investigative Cooperation/Assistance Rules & Procedure, 2021.

Further, the FCCPC adopted the Guiding Principles for Sustainable Consumption proposed on the annual World Consumer Rights Day of 2020 (“Sustainable Consumption Principle”)³¹.

There are other sector regulators who, by virtue of their establishing/enabling laws in addition to their primary responsibilities, have responsibilities to protect consumers in Nigeria. Although the FCCPA recognises other consumer protection legislation, rules and regulations, they are to be read with such modifications as are necessary to bring them into conformity with the provisions of the FCCPA.

In addition, the FCCPA states that other sector regulators with consumer protection oversight shall be deemed to have a concurrent jurisdiction with the FCCPC, and in the event of conflict between the FCCPC and a sector regulator, the FCCPC will have precedence over the said sector regulator. Such sector regulators include:

(a) The Central Bank of Nigeria (“CBN”): - the CBN issued the Consumer Protection Regulations, 2019 to guide the effective regulation of consumer protection practices of financial institutions under the regulatory purview of the CBN³².

(b) Nigerian Communications Commission (“NCC”): - The NCC, as the apex regulator of the Nigerian communications industry, is vested with powers to protect and promote the rights and interest of communication services consumers against unfair practices in Nigeria. The NCC issued the General Consumer Code of Practice, 2018, which has detailed provisions on the protection of the rights and interests of communication services consumers.

(c) Nigerian Electricity Regulatory Commission (“NERC”): - The NERC, which is empowered by the legislation³³ to, amongst others, ensure: That the prices charged by electricity supply/distribution licensees are fair to those consumers; and the Safety, security, reliability and quality of service in the production and delivery of electricity to consumers. The NERC issued the NERC Customer Service Standards of Performance for Distribution Companies, 2007 and the Customer Complaints Handling: Standards and Procedure, 2006 in order to establish an expected standard of performance, as it relates to consumers, for electricity distribution companies and also to establish a procedure for the handling of customers’ complaints.

(d) National Agency for Food and Drug Administration and Control (“NAFDAC”): - an agency under the Nigerian Federal Ministry of Health³⁴, which ensures consumer protection by regulating and controlling the manufacture, importation, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, chemicals and packaged water and beverages in Nigeria.

(e) Standards Organisation of Nigeria (“SON”): - is empowered by the legislation³⁵ to, amongst others, ensure:

³¹ Azeedah Muse-Sadiq & Mavis Abada, (2020) Practical Cross-Border Insight into Consumer Protection Laws, Consumer Protection. 3rd Ed

³² Pursuant to powers conferred on it by the CBN Act (as amended) and the Banks and Other Financial Institutions Act, 2020,

³³ Electric Power Sector Reform Act, 2005,

³⁴ The NAFDAC Act, 2004 established NAFDAC

³⁵ Established by the SON Act, 2015

- i. Locally manufactured products in Nigeria give the required degree of satisfaction to consumers; and
- ii. That products imported into Nigeria are safe and import conditions are met.

(f) Nigerian Broadcasting Commission (“NBC”): - The NBC was established by virtue of the NBC Act, 2004, and as part of its regulatory role, it is vested with the responsibility of, amongst others, receiving, considering and investigating complaints of consumers in respect of broadcasting services.

(g) Nigerian Civil Aviation Authority (“NCAA”): - the NCAA has regulatory oversight over the aviation industry in Nigeria. As part of its regulatory role, the NCAA³⁶ created a Consumer Protection Department, which ensures that all consumers in the aviation industry obtain the best services in air transportation, and issued the Nigeria Civil Aviation Regulations, 2015, which broadly address consumer protection issues including compensation for denied boarding, delays and cancellation of flights.

(h) National Insurance Commission³⁷ set up to cater for consumer insurance interests; and

(i) Nigerian Tourism Development Corporation³⁸ set up to encourage the provision and management of tourism amenities including the development, regulation, registration, classification of hotels, and hospitality enterprises³⁹.

³⁶ By virtue of the Civil Aviation Act, 2006,

³⁷ Set up by Decree No. 1 of 1997, now the National Insurance Commission Act Cap. N53 Laws of the Federation of Nigeria, 2004.

³⁸ Established by the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of Nigeria, 2004

³⁹ See s. 4 of the Nigerian Tourism Development Corporation Act. By s. 7 of the Act State Tourism Boards are established for the states of the federation with corresponding functions. Pursuant to this section there is for instance the AkwaIbom State Hotels and Tourism Board, with a Tourism Board

These agencies are conferred with extensive functions relating to setting of standard, control of quality, and investigation of consumer complaints⁴⁰. Their mandates are basically administrative in nature; they seek to regulate the production, supply and provision of goods and services.

Accredited consumer protection groups may also commence actions to protect the interest of consumers. In addition, the Securities and Exchange Commission and all self-regulatory organisations have regulatory oversight over capital market operators in relation to complaints by their clients.

It is important to note that administratively, consumer policy focuses on two strategies in the protection of consumer⁴¹. One is the preventive strategy which objective is to prevent the consumer from getting injured in the first place. The objectives of the Standards Organisations of Nigeria (SON) and the National Agency for Food and Drugs Administration and Control (NAFDAC) fall primarily into this category. Two, is the redress strategy, which involves providing appropriate compensation or redress to an injured consumer. The objectives of the FCCPC⁴² as a regulatory agency fall into this category.

Generally, an amalgam of the two strategies is needful to have an effective consumer protection regime. From the foregoing, an inter-relationship of functions of these administrative agencies is unavoidable. It is instructive to note that a jurisdictional conflict is hardly to be avoided. An effective government policy is necessary to be institutionalised for the proper management of the inter-relationship of

Law, Cap. 132 Law of Akwa Ibom state 2000 in place for the day to day running of the Board.

⁴⁰ Boma, at p. 179.

⁴¹ Kanyip, B. B., "Legal Issues in Consumer Protection in Nigeria", being a paper presented at the Refresher Course for Judges and Kadis, held at Andrews Otutu Obaseki Auditorium, National Judicial Institute, Abuja, from March 23 to 27, 2009 at p. 29.

⁴² S.163 Federal Competition and Consumer Protection Act, 2018

functions to prevent the imminent conflict from impacting negatively on the consumers. However, doubt has been expressed as to whether the consumer can pursue a claim for injury or defect in products against a regulatory agency on the ground that he relied on the agency's quality assurance on a product to consume the product, which turned out to be harmful to him⁴³.

4.0 THE COURTS ATTITUDE TO CONSUMERS PROTECTION IN NIGERIA

The judiciary is generally seen as the last hope of the common man; the hope of the hopeless, the help of the helpless, and the safe sanatorium for the legally injured⁴⁴. In the power relation between the consumer and the producer, the consumer is seen as a weeping child, the common man. He therefore looks up to the court for protection from the antics and vagaries of unscrupulous businessmen, who would usually resort to sharp and unfair trade practices to maximize profits at the consumer's expense.

The incidences of the supply of deficient and adulterated goods, coupled with provision of shoddy services in the market place have assumed an alarming situation in Nigeria⁴⁵. To check this tide, a variety of approaches have been adopted for the protection of the consumer. The judiciary provides the primary venue for obtaining redress in consumer protection matters. From the judicial perspective therefore,

⁴³ Iniagbedion, N. A., "Consumer Merchantability and Standards Organization of Nigeria" (1993) 2 Edo State University Law Journal, p. 79. The argument is that it should be possible for a customer to sue SON if it negligently certified a product which turns out not to be merchantable or caused injury to the consumer; see also Kanyip, B. B "Reflections on Consumer Protection Law in Nigeria" in Ayua, I. A., (ed.) Law Justice and the Nigerian Society (Lagos: NIALS, 1995) pp. 300- 301. A detailed discussion on this has been captured in note 4.6.1 under the SON in chapter 4.

⁴⁴ Oputa, Chukwudifu A., "Quod Vadis- Nigerian Supreme Court: Judicial Activism or Judicial Rascality", in Towards Functional Justices: Seminar Papers of Justice Chukwudifu A. Oputa, ed. by Okeke, Chris (Ibadan: Gold Pres Ltd., 2007) 356 at p. 368.

⁴⁵ Monye, Law of Consumer Protection, at p. 1.

consumption is perceived as one of the rights of citizens⁴⁶. The Constitution of the Federal Republic of Nigeria provides for fundamental right to citizen. Section 33 of the Constitution provides for right to life. This presupposes the right to consume safe food, water, air, services and other articles for the sustenance of the citizen's life. It would seem that the judiciary views issue of consumer protection as a matter that is very fundamental and near life threatening in Nigeria as reflected in the possible dangers adulterated and fake products pose to the life of the consumer. Commenting on the susceptible state of the Nigerian consumer, Aniagolu, JSC, in **Nigerian Bottling Co. Ltd. V Ngonadi**⁴⁷ expressed:

"Nothing appears to be more elementary in this country where it is often the unhappy lot of the consumers to be inflicted with shoddy and unmerchantable goods by some pretentious manufacturers, entrepreneurs, shady middlemen and unprincipled retailers whose avowed interest seems only, and always, to be to maximise their profits leaving honesty a discounted and shattered commodity."

This expression by the apex court in the land would give the impression that our consumer protection is given the highest attention by the court. In reality, consumer protection appears to be a concept that is yet to be fully acknowledged by the court. This position reflects in the dictum of Edozie, JCA in **Hill Station Hotel Ltd. V Adeyi**,⁴⁸ when he said,

"I have myself scanned through the law of the country but have not been able to find any statute bearing on the subject Hotel Proprietors' and Innkeepers' liability. It seems doubtful if there exists any law in this country similar to the English Hotel Proprietors Act (1956)".

This expression by His Lordship is bereft of support, and for a number of reasons reveals the

⁴⁶ See Cap IX, Constitution of the Federal Republic of Nigeria 1999, hereinafter referred to as "the Constitution".

⁴⁷ [1985] 1 Nigerian Weekly Law Reports (Pt. 4) 739, at p. 753.

⁴⁸ Hill Station Hotel Ltd. v Adeyi [1996] 4 Nigerian Weekly Law Reports (Pt. 442) 294, at p. 312.

shallowness of the judiciary in the perception of consumer protection matters. His Lordship proceeded as if the Statute (of General Application)/common law distinction in bailment was inapplicable in Nigeria⁴⁹. The expression which appears to be a mirror of the attitude of the court to consumer protection in Nigeria can be said to be a product of hastily conclusion.

First, historically, the regulation of common inns and hotels, the concern in the case, was through the common law. At common law innkeepers were held strictly liable for the loss of their guests' goods, a position that was given statutory flavour by the English Innkeepers Act of 1368⁵⁰. By the peculiar colonial status of Nigeria, one wonders why His Lordship did not have recourse to common law or the English Act⁵¹. Secondly, it is difficult to concede to His Lordship that in 1996 when Hill Station Hotel was decided there were no local legislation in Nigeria similar to the English Hotel proprietors Act. Statutory regulation of hotel and hotel proprietorship in Nigeria is within the ambit of the legislative powers of the state⁵².

This is as a result of the review of pre-1900 English Statutes of General Application by the Law Reform Commission in 1987 whereby certain laws were assigned to the states. The Draft Laws, which were the product of that exercise, were sent to the states for purposes of enacting them as their local legislation⁵³. Some states like Akwa Ibom and Kaduna complied, hence the enactment of the Innkeepers and Hotel Proprietors Law of Akwa Ibom State⁵⁴ and the

Innkeepers and Hotel Proprietors Edict of Kaduna State⁵⁵. It follows therefore that as at 1996 when His Lordship made the expression, there were the Innkeepers and Hotel Proprietors Edict 1988 of Rivers State and 1990 of Kaduna State. Although out courts are enjoined by law to take judicial notice of all legislation⁵⁶, possibilities are that the courts may not just be familiar with the concept of consumer protection.

Although, the concurrent judgment of Aniagolu, JSC in **Ngonadi's case** appear to have brought the consumer something to cheers about, it is however doubtful if the cheers were not short-lived. With Ngonadi decided in 1985 by the Supreme Court, the legal development of consumer protection in Nigeria would by far be quite advanced today. This does not appear to be the case. In most of the cases that followed Ngonadi⁵⁷ the courts' decisions did not seem to reflect the charge by Aniagolu, JSC.

In **Anyah v Imo Concorde Hotels Ltd. & 2 Ors**⁵⁸, the appellant had gone to Owerri for a book launch. He went to the 1st respondent's hotel and booked for accommodation for a night. At the gate of the hotel, the 2nd and 3rd respondents, who were the hotel security men on duty, registered the number plate of the appellant's car, and issued him with a plastic disc No. 2. The appellant drove in, parked his car in the parking space of the hotel, and checked into the room allocated to him. In the morning the appellant checked out of the hotel

⁴⁹ Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy*, at p. 175.

⁵⁰ Borrie, Gordon and Diamond Aubrey L., *The Consumer Society and the Law*, 3rd ed. (Middlesex: Penguin Books, 1977) at pp. 14-15 and 238-242

⁵¹ This being a Statute of General Application by virtue of Ordinance No. 3 of 1863; see *Attorney General v John Holt & Co.* (1910) 2 Nigerian Law Reports, 1

⁵² See item 18, Part II to the 2nd Schedule to the Constitution

⁵³ Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy*, at p. 177.

⁵⁴ The Innkeepers and Hotel Proprietors Law Cap 63 Laws of Akwa Ibom State 2000

⁵⁵ The Innkeepers and Hotel Proprietors Edict No. 3 of 1990 Laws of Kaduna State; the Innkeepers and Hotel Proprietors Law Cap. 71 Laws of Rivers State 1999; and The Innkeepers and Hotel Proprietors Law of Lagos State.

⁵⁶ S. 74(1) (a) and (b) of the Evidence Act Cap E14 Laws of the Federation of Nigeria, 2011

⁵⁷ **Anyah v Imo Concorde Hotels Ltd. & 2 Ors** [2002] 12 Nigerian Supreme Court Quarterly Reports, 231, 12 S.C. (Pt. II) 77; **Ibidapo v Lufthansa Airline** [1997] 4 Nigerian Weekly Law Reports 124 SC; **Kabo Air Ltd v Oladipo** [1999] 10 NWLR 517 CA; **UTA French Airlines v Williams** [2000] 14 Nigerian Weekly Law Reports 271; **Amadi v Essien** [1994] 7 Nigerian Weekly Law Reports 91 CA;

⁵⁸ *Supra*

but discovered that his car had been stolen. He reported the matter to the hotel management. The appellant then sued the respondents for the value of the car and other expenses incurred as a result of the absence of the car, alleging that the respondents were negligent in allowing his car to be stolen. The respondents denied owing the appellant any duty in respect of his car for which performance they were negligent. The High Court entered judgment for the appellant, but which the Court of Appeal overturned. Upon appeal to the Supreme Court, the judgment of the Court of Appeal was allowed, leaving the consumer without a remedy. In this case, the Supreme Court ostensibly placed a near impossible to discharge burden of proof on the consumer, when it said, per Kalgo JSC:

*... the appellant gave evidence of the loss of his car but gave no detailed evidence of the fact and circumstance giving rise to the loss of the car. Nor did he explain the relationship between him and the respondents upon which the duty of care for his car would arise, and how that duty was breached*⁵⁹.

It is doubtful how the court expects this burden "of giving detailed evidence of how the car was stolen" to be discharge by a consumer, in matter which was not argued under bailment. Where it is under bailment, the burden of proof would have been shifted to the respondent to disprove his negligence. His Lordship expressed that if the appellant had after being given the plastic or metal disc, parked his car, locked it up, gave the key to the hotel security men and drew their attention to where he parked the car, then there may arise a duty of care on the part of the security men to ensure that the car was safe⁶⁰. Or had the appellant established that the respondents left the gate unattended and the car was driven out through the gate, only then would the appellant discharge the onus of the existence of a prima facie duty of care⁶¹. These were however not to be. One wonders if these facts were or could be within the knowledge of

the consumer. Certainly, a man who parked his car and went to sleep could not have seen the car being removed to be expected to give such detailed evidence of the removal of the car as required by the court. Also, a sleeping man could not have seen the respondents leave the gate unattended to and his car driven out. It is doubtful if any consumer in the circumstances of this case can discharge this onerous burden of proof. Commentators on consumer protection in Nigeria have recognized that the greatest setback to consumer recovery in our courts is placing the onus of proof on the consumers even when it is practically impossible for them to discharge⁶².

On the issue of relationship between the appellant and the respondent to warrant a duty of care for the car to arise, one is taken aback that in circumstance, where the appellant was given the hotel disk to enter and park in the hotel premises after his car number plate had been registered by the hotel security men, the court still demanded of the appellant evidence of duty of care for the car. The appellant did not just drive his car into the hotel, he went through all the security processes required of him by the hotel, as directed by the latter's security men. The burden of proof placed on the consumer in this case was quite onerous. Commentators are agreed that in placing such onerous burden of proof on the consumer, the Nigerian courts appear unmindful of the fact that the allocation of the burden of proof is usually resolved by policy consideration, fairness and probability⁶³. If these considerations were brought to bear by the Supreme Court in deciding **Anyah's case**, it is doubtful if the near impossible to discharge

⁶² See generally, Kanyip, Consumer Protection in Nigeria: Law, Theory and Policy, at pp. 279-296; Monye, "The Defence of Foolproof System of Production" (2005) 1 Consumer Journal, No. 1 (2005) at pp. 1-34; and Agomo, C. K.: "Liability for Defective Products", at p. 68.

⁶³ Fleming, John. G., The Law of Torts 7th ed. Sydney: The Law Book Co. Ltd.1987 at p. 285; Adekunle, A, "Consumer Protection in Nigeria: An Update" (1993) 9 Justice No. 7 p. 72 at pp. 74-75; Kanyip, "The Supreme Court and the Development of Consumer Protection in Nigeria", at p.10.

⁵⁹ Anyah's case (above cited) at pp. 245-246

⁶⁰ Anyah's case (above cited), at p. 246

⁶¹ Anyah's case (above cited), at p. 249

burden of proof would have still been placed on the consumer, the result would have probably been to place the burden of disproving negligence on the respondent, and not vice versa. One wonders why the Supreme Court came to the decision in **Anyah's case** without advertent to the English case of **Williams v Linnitt**⁶⁴, which facts were in pari materia with Anyah's case. The facts of Williams' case are that the Plaintiff stopped at the Defendant's inns, parked his car in the inns' car park, which had a disclaimer of liability notice displaced, and had drinks with his friends at the inn. An hour later the Plaintiff found that his car had been stolen. The English Court of Appeal held that the car park was within the hospitium of the inn. The court considered the following facts:

- i. That the car park was contiguous to the inn and one in which a guest with a car was customarily invited to leave it;
- ii. That no evidence was adduced that the inn provided an alternative accommodation for cars; and
- iii. That part of the inn's normal business was to provide accommodation for the cars of guests.

The court held that the Defendant was liable and that the notice at the car park did not relieve the inn of its liability. Although, neither the parties nor the court in Anyah's case relied on Williams' case, it would appear that the court would have reached a different decision if it had adverted to Williams' case. Although Williams' case was based on the relevant English Law, the spirit underlying it, which is, to protect lodgers⁶⁵, is recommended for adoption in Nigeria. In addition, the consumer in **Kabo Air Ltd v Oladipo**⁶⁶ did not fare any better. Although this is a Court of Appeal decision, the court seems to have been guided by the binding precedent of the Supreme Court in **Ibidapo v Lufthansa**

⁶⁴ [1951] 1 All E R 278

⁶⁵ Adediran, M. O. & Oyelade, O. S., "Responsibility of Hotel Proprietors for Loss of Lodgers' Properties: An Examination of Anyah v. Imo Concorde Hotel & Ors" (2004) 3 No 1 *Ibadan Bar Journal*, p. 130, at p. 135.

⁶⁶ *Supra*

Airline⁶⁷. The facts of the two cases are in pari materia⁶⁸.

In **Kabo Air**, the respondent boarded the appellant's aircraft on December 30, 1994 from Kaduna to Lagos to attend a family wedding and to celebrate the New Year with his family. He checked in his luggage and was issued with a luggage tag. When he arrived Lagos, he however discovered that his luggage was not checked into the aircraft he boarded. He lodged a complaint with the appellant, but was asked to await the arrival of the appellants' next flight from Kaduna. On arrival, that flight did not have the luggage. The respondent cut short his holiday and returned to Kaduna as he could neither attend the wedding nor the New Year celebration with his family. The respondent sued the appellant at the Kaduna State High Court claiming special and general damages. The appellant was not represented at the trial, the respondent led evidence and obtained judgment. The appellant filed an application at the trial court praying the court to set aside its judgment. The application was dismissed, whereupon the appellant appealed to the Court of Appeal. Unanimously allowing the appeal, the Court held that the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order of 1953 is an existing law and is applicable in Nigeria as earlier held by the Supreme Court in **Ibidapo**. The court also held that the State High Court had no jurisdiction to have tried the matter in view of the Federal High Court (Amendment) Decree of 1991⁶⁹.

The consumer in this case was left disappointed. It is instructive to note that the relationship between an air carrier and its passenger in relation to the carriage of goods and luggage is one bailment, where a duty exists for the bailee to deliver the article to the bailor upon request. The relationship is also regulated by the Warsaw Convention adopted by the 1953 Order. While liability regime in bailment appears more liberal

⁶⁷ *Supra*

⁶⁸ While **Kabo Airlines** relates to local air passenger, **Ibidapo** relates to international air passenger

⁶⁹ [2008] 33 *Nigerian Supreme Court Quarterly Reports* (Pt. II) 863.

and consumer friendly, the decision in the case of *Kabo Air* does not seem to portray this. The court appears to have sacrificed the consumer's interest in that case on the altar of technicalities. One wonders why the court allowed technicalities to defeat the cause of the consumers in *Kabo Air* and *Ibidapo* when the circumstances of loss of luggage in both cases, that is, common carriers and air travellers, were similar to the loss suffered by the consumer in **Hill Station Hotel Ltd. v Adeyi**⁷⁰. It would appear that if the court adverted to consumer policy consideration and fairness in arriving at its decision in *Kabo Air*, possibilities are that the court would have reached a different decision.

Although the consumer appeared to have had cause to smile in the more recent case of **Edward Okwejinor v Gbakeji and Nigerian Bottling Co. Plc.**⁷¹ The fact of the case has it that Mr. Edward Okwejinor, the appellant at the Supreme Court, returned from work hungry and thirsty. He reached for a bottle of Fanta orange from a crate he purchased from the 1st respondent. While drinking the Fanta orange, he allegedly felt some sediments and rubbish down his throat. He stopped halfway and took a closer look at the content of the bottle and found that it contained a dead cockroach. To the appellant, the quantity of the Fanta that he took gave him much discomfort, which led to incessant spitting and loss of appetite. He later developed stomach pain and was rushed to the hospital, where he was diagnosed as suffering from food poisoning after his stool and a sample of the fanta were sent for laboratory analysis. The trial High Court held that the particulars of negligence pleaded by the plaintiff were proved and entered judgment in favour of the plaintiff. The 2nd respondent, Nigerian Bottling Co. (NBC) Plc., appealed to the Court of Appeal, that court allowed the appeal and entered judgment for the NBC⁷². Dissatisfied with the Court of Appeal

decision, the appellant appealed to the Supreme Court. The Supreme unanimously allowed the appeal, set aside the judgment of the Court of Appeal and restored that of the High Court. Concern was however raised for consumers when the Court held per Muhammed JSC, that from the totality of the evidence adduced, it would amount to a serious miscarriage of justice to hold Gbakeji, the 1st respondent, who was the retailer of the drink liable.

The statement by His Lordship on Gbakeji, seems to have adjusted the principle in the tort of negligence. Until then, the general perception was that those in the chain of distribution could not absolve themselves from liability on the sole excuse that they were not the manufacturers. It was believed that on the principle of joint and several tortfeasors, the retailer or the consumer could claim contribution from the manufacturers. The rationale for this could have been that the victim/consumer may not be able to reach the manufacturers, especially for imported product. Whereas, the retailer is more often than not known and accessible by the consumer, the manufacturer may never be known or reached by him. Nevertheless, there exists privity of contract between the retailer and consumer (buyer), which by principle of contract may exclude the manufacturer. Under the provisions of the Sale of Goods Laws the retailer (seller) owes a duty to the consumer that the goods he is selling are not only free of defect, fit for the required purpose, but also of good quality⁷³.

In *Ngonadi's* case, the Supreme Court held to the effect that section 15(a) of the Sale of Goods Law of Bendel State⁷⁴ does not draw a distinction between manufacturer and retailer

⁷⁰ [1996] 4 Nigerian Weekly Law Reports (Pt. 442) 294, at p. 312.

⁷¹ [1998] 8 Nigerian Weekly Law Reports 295, CA

⁷² See *Ngonadi's* case, at p. 750.

⁷³ Ss. 13-15 Sale of Goods Act 1893; ss. 12-14 Sale of Goods Law Cap 117 Laws of Akwa Ibom 2000; ss. 14-16 Sale of Goods Law Cap 174 Laws of Lagos 1994; ss. 14-16 Sale of Goods Law Cap 150 Laws of Bendel State 1976 applicable in Edo; ss. 15-17 Sale of Goods Edict No. 15 of Kaduna 1990; and ss. 12-14 Sale of Goods Law Cap 115 Laws of Rivers 1999.

⁷⁴ Now applicable in Delta State, with similar provisions in s. 14 s SOGA, s. 13(1) SOGL Akwa Ibom, s. 15(a) SOGL Lagos, s. 16(1) SOGE Kaduna; and ss. 13(1) SOGL Rivers

and that both can be liable for breach of implied warranty as to fitness. In the words of Oputa, JSC,

"Section 15(a) ... does not draw that distinction. In express language, its provision apply 'whether he is the manufacturer or not.'

Secondly it is far too late in the day to draw that distinction going by the principle of Lord Atkin in **Donoghue v Stevenson**⁷⁵. In contract, the retailer's liability is indisputable. Accordingly, the retailer's liability was not only allowed by the law of tort, but also by contract.

The distinction, Oputa JSC was referring to, which is now commonly known as the Atkinian principle, is that between the retailer and manufacturer in relation to liability. His Lordship's expression was merely a restatement of the law of negligence, where anyone in the distribution chain can be held liable. The pronouncement of Muhammed, JSC, in respect of the retailer's liability did not leave the position expressed in the Atkinian principle which was re-echoed by the same Supreme Court in Ngonadi's case undisturbed. It can rightly be asserted that by Okwejinor's case, the consumer's dilemma was compounded as the Supreme Court succeeded in throwing more spanners into the works of consumer protection, apparently taking away with the left hand what it had given the consumer with the right hand.

An assessment of the level of familiarity of our courts with consumer protection regulatory concerns leaves much to be desired. It is doubtful if it is apposite for Nigeria, which has a legal system akin to the English, with the Common law tradition. Even though developed by the Americans within the context of judicial review of legislative actions particularly, regarding constitutional matters, the concept of "judicial restraint" has been generally expressed within the common law realm⁷⁶. Adumbrating

⁷⁵ [1932] UKHL 100. The case of **Donoghue v Stevenson** is a landmark case that established the principle of duty of care and laid a foundation for the tort of negligence. It established that regardless of the absence of a contractual relationship between parties, a duty of care could arise.

⁷⁶ Kanyip, at p. 4,

on this, Justice Uwais, then CJN expressed to the effect that judicial self restraint has given rise to the doctrine of *locus standi*, "or the interest which a person must have to invoke the court's intervention in constitutional cases. This according to His Lordship resulted in a deliberate policy to avoid adjudication of such cases, which he regarded as "self imposed" than inherent. He sums up by describing the process as

*"... an attitude motivated by self restraint which finds practical expression in a policy of avoidance"*⁷⁷.

The expression of His Lordship, though made in respect of exercise of judicial review of legislative action, is of paramount relevance in the wider issue of when or when not to hold torfeasor liable by a court. This issue transcends the borders of Nigeria, as Lord Dinning in **Candler v Crane, Christmas & Co.**⁷⁸, divided his fellow judges into two categories, that is, category one being the timorous souls who were fearful of allowing a new cause of action, and category two being the bold souls who were ready to allow it if justice so required. From this categorisation, and attitude of our courts in consumer protection, one is tempted to conclude that majority of Nigerian judges are rather reluctant and develop heavy hand when it comes to judicial activism and in making pronouncement that involve consumer's right. Considering the line up of cases reviewed herein, the temptation is to wonder if the Supreme Court in Anyah's case did not allow a rare opportunity of developing and entrenching a positive judicial policy on consumer protection to slip away.

5.0 CONCLUSION

One of the purposes of law is that law must solve the changing problems of the society. It can be gleaned from this study that their exist at

⁷⁷ Uwais, M. L., "The Courts and the Legislative Privileges" a paper presented at the 2003 All Nigerian Judges' Conference held at Nicon Hilton Hotel, Abuja, between December 9 and 13, 2003

⁷⁸ [1951] 2 K. B. 164 at p. 178; 1 All E. R. 426 at p. 432.

present, an institutional framework in place in Nigeria in meeting the needs of the consumers. From the cases reviewed in this paper however, it is obvious that beside the availability of appropriate legislation, the court has hardly been able to rise to the occasion, whenever a consumer approaches it for redress. It would appear that what is required in Nigeria as it concerns consumer protection when it concerns hospitality and tourism business is legislative and executive intervention as judicial activism expected of our courts is lacking in will. Compared to other climes, judicial activism would have been the lifeline the consumer can rely upon resting on the courts. Adumbrating judicial activism, Oputa, JSC posits:

*"We [the judiciary] are not to fold our hands and do nothing. No. Our judges have to so interpret the law that it makes sense to our citizens in distress and assure them of equal protection of the law, equal freedom under the law, and equal justice. And this is what judicial activism is all about".*⁷⁹

His Lordship went on to identify Lord Denning as a judge whose activism impacted positively on the state and litigants. According to him, several "jurisdictions have been positively affected by Denning's activism and many of their judges have adopted his approach of making law a handmaid of justice and making law solve the changing needs of dynamic society - The Sociology of Law."⁸⁰ Protection of the consumer is a social challenge in hospitality and tourism as well as in Nigeria, and social justice require the hunc et munc- the here and now, it entails solving social problems that now exist with laws and legal procedures tailored to suit the peculiar circumstances of the society.

The court must be considered as one of the institutions for the advancement of consumer

⁷⁹ Oputa, Chukwudifu A., "Legal and Judicial Activism in an Emerging Democracy: The Last Hope for the Common Man?" in Towards Functional Justices: Seminar Papers of Justice Chukwudifu A. Oputa ed. by Okeke, Chris (Ibadan: Gold Press Ltd., 2007) 12 at p. 27

⁸⁰ Oputa, Chukwudifu A., "Judicial Activism or Judicial: A Catalyst for Political Development or Rascality", 37 at p. 58

protection, the other being the legislative administrative processes. Horowitz identifies six distinguishing characteristics, which not only differentiate the adjudicative process from the other process, but equally serve as the institutional limitations of the court⁸¹. One, adjudication is focused and essentially deals with individual rights and duties, and not necessarily with broad policy issues. Two, the courts have a limited variety of remedies compared with the broader range of alternatives available to the other institutions. Three, adjudication is piecemeal, and is rather apposite for a gradual adjustment. Four, courts are passive and reactive, and so make litigation ex post facto. Fifth, facts finding in adjudication are ill suited to ascertaining broad social facts concerning the broad policy issues raised in individual cases. Six, adjudication makes no provision for monitoring and assessment of the unintended behavioural impact of decisions and policy review. He sums up by asserting that these limited characteristics are more or less important depending on judicial familiarity with the regulatory are concern⁸².

To protect the Nigerian consumers in an era where hospitality and tourism offerings keep evolving due to the characteristic nature of its services/products, requires the progressive knowledge of our courts in the application of the fundamental principles of the constitution and international policies like the United Nations Guidelines on Consumer Protection and the Model Law for Consumer Protection in Africa, the principles of equity, justice and purposeful advancement of the consumer welfare.

6.0 RECOMMENDATIONS

Government should be involved in the creation of awareness and proper orientation to the consumers through the respective sectoral and generic regulatory agencies. This will help the

⁸¹ Horowitz, D L., (1977) The Courts and Social Policy Washington D. C.: Brookings, 1977 at pp. 34-56.

⁸² Horowitz, at p. 58; see also Kanyip, "The Supreme Court and the Development of Consumer Protection in Nigeria", at pp. 3-4.

consumers to know how to vent their grievances when a service provider has defaulted.

Also, these agencies should be accessible both in rural and urban environments. A time frame should also be initiated to investigate and resolve the issue of a consumer's complaint.

Training and retraining of the courts on the peculiar nature of the hospitality and tourism businesses as well as on consumer protection laws within country as well as other developed countries should be embarked upon.

It is further suggested that a special multi-door court be created for the purpose of handling matters relating to consumer protection while using the suitable means of alternative dispute resolution in resolving such matters. Taskforce should be created to act in scrutinizing the operation of hospitality and tourism service providers while they take unexpected visits to their sites, among others.

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